

January 12, 1999

Ms. Tenley A. Aldredge
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767-1748

OR99-0091

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121067.

The Travis County Sheriff's Office (the "Sheriff's Office") received a request for all records pertaining to two named individuals, the number of times the Sheriff's Office has been called to 15315 Lund Carlson Road in Elgin, Texas, and the number of 911 calls from this address. You claim that the responsive information consists of several incident reports that are excepted from disclosure by sections 552.101, 552.108, and 552.130 of the Government Code. You have submitted the responsive information for our review.

The Sheriff's Office, however, has not sought an open records decision from this office within the statutory ten-day deadline. *See* Gov't Code § 552.301. You indicate that you received the request for information on October 1, 1998, but you did not seek a decision from this office until October 16, 1998. Your delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. Section 552.108 does not generally provide a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991). The applicability of section 552.101 does provide such a compelling reason. Open Records Decision No. 150 (1977).

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common-law right of privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). To the extent the requestor is asking for any unspecified records in which the named individuals are identified as a "suspect," the requestor, in essence, is asking that you compile those individuals'



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

— * —
JOHN CORNYN
Attorney General

— * —
P.O. Box 12548
Austin, Texas
78711-2548

(512) 463-2100
www.oag.state.tx.us

criminal history. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. See Open Records Decision Nos. 616 (1993), 565 (1990). You, therefore, must withhold all compilations of the referenced individuals' criminal histories pursuant to section 552.101. We have marked this information.¹

We will now address whether the remaining requested documents not discussed above must be withheld. Some of the documents are not protected by the holding in *Reporters Committee*. You argue, nonetheless, that portions may be protected by the common-law right of privacy. Information may be withheld under common-law privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 at 1 (1992). We have examined the remaining records. We do not find any information that must be withheld under the common-law right of privacy in these records. We have marked the information that must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB\nc

¹Because we make a determination under section 552.101 for much of the requested information, we need not consider your additional compelling arguments against disclosure. *E.g.*, Gov't Code § 552.130.

Ref: ID# 121067

Enclosures: Marked documents

cc: Mr. Rick Flores
CSC Financial Services Group
Room B2038
9500 Arboretum Blvd.
Austin, Texas 78759
(w/o enclosures)